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Baptist Church of Bellevue, 137 Mich. 335. The principal case is in harmony with this modern tendency to grant relief when refusal would be harsh and inequitable and when the intent of the parties can be clearly shown.

SALES—BREACH OF WARRANTY—PRESUMPTION.—FINK v. MARR, 142 PAC. (WASH.) 482. Failure of the buyer to complain of the quality of the goods when their inferiority was discovered or within a reasonable time thereafter raises a presumption of FACT that the complaint of defective quality is unfounded.

Where the vendee retains possession of the goods and fails to give notice of defects or to return them, the presumption of LAW is that he has waived his objections and has no cause of action. *Wells v. Sherwood*, 61 Barb. (N. Y.) 238; *Tilley et al. v. The Enterprise Stone Co.*, 127 Ill. 457. There is a tendency by some of the courts to sustain the holding of the principal case. See *Ash v. Beck*, 68 S. W. (Texas) 53, also *Babcock v. Trice*, 18 Ill. 420. The weight of authority at present is adverse to the holding of the principal case.

WILLS—CONTEST—BURDEN OF PROOF.—HERRING ET AL. v. WATSON, 105 N. E., 900 (IND.).—*Held*, that where probate of a will is resisted on the grounds that the maker was of unsound mind and that the will was not duly executed, the burden of proving due execution and testamentary capacity is on the proponents of the will. Cox, C. J., and Erwin, J., *dissenting*.

The principal case follows the rule laid down in several previous decisions in this jurisdiction. *Steinkuehler v. Wempner*, 169 Ind. 154; *McReynolds v. Smith*, 172 Ind. 336. But the law in Indiana was formerly different, then placing the burden of proof on the contestants alleging absence of due execution or want of testamentary capacity. *Blough v. Parry*, 144 Ind. 463; *Teegarden v. Lewis*, 145 Ind. 98. Many other states have the doctrine set forth in the principal case. *Barber's Appeal from Probate*, 63 Conn. 393; *In re Hoyles' Estate*, 162 Mich. 275; *Fulton v. Umbehend*, 182 Mass. 487. There is, however, an entire divergence of opinion on the point, and about an equal number of jurisdictions place the burden of proof on the contestants. *Goldthorpe v. Goldthorpe*, 115 Ia. 430; *Matter of Preston*, 113 N. Y. App. 732; *McNitt's Estate*, 229 Pa. 71. In practically all jurisdictions there is a presumption in favor of the validity of the will, which enables the proponent to make out a *prima facie* case by proving the due execution of the will. Likewise, then, all these courts place upon the contestant the burden of going forward with evidence to overcome the presumption of validity which the law makes. By the former Indiana rule the proponent by establishing his *prima facie* case also throws the burden of proof upon the contestant, where it remains throughout the trial. Under the doctrine of the principal case the burden of proof is always on the proponent but the presumption of validity which the law makes weighs in his favor throughout.